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Mr. Volpe

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-198765

DATE: March 19, 1981

MATTER OF: Robert R. Brooks, et al. -- [Claims for pay retention upon entering training program]

- DIGEST:
1. Two Navy wage grade employees accepted demotions to General Schedule positions in order to enter agency training program. Training program is not one of three formal Government-wide programs qualifying for pay retention and Navy did not offer pay retention under these circumstances. However, since demotion was not considered to be at employees' request and employees were reassigned to different pay schedule (WG to GS), they are entitled to pay retention.
 2. Navy employee who accepted demotion from a General Schedule position to a lower-graded General Schedule position in order to enter internal training program is not entitled to pay retention. Training program is not one of three formal Government-wide programs qualifying for pay retention, the Navy did not offer pay retention under these circumstances, and the employee was not reassigned to a different pay schedule.

The issue in this decision is whether employees who accept demotions in order to enter internal training programs are entitled to pay retention under 5 U.S.C. § 5363 and the implementing regulations. We hold that unless the employees enter such Government-wide training programs as Upward Mobility, Apprenticeship, or Career Intern, they are not entitled to pay retention except when the agency, in its discretion, extends pay retention to such demotions or the employee moves to a different pay schedule as a result of the action.

This decision is in response to claims from three Department of the Navy employees, Robert R. Brooks, Dorothy L. Grafton, and Raymond Tullas, for pay retention

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incident to their accepting downgrades in order to enter training programs for different positions. The Navy has denied pay retention to all three employees.

Messrs. Brooks and Tullas are employed at the Naval Air Rework Facility, Jacksonville, Florida, and effective February 25, 1979, they entered the Quality and Reliability Assurance Training Program and accepted downgrades to the position of Quality Assurance Specialist, grade GS-5, step 10. Mr. Brooks previously held the position of Sheet Metal Worker, WG-8, step 4, and the downgrade resulted in a reduction in his hourly rate of pay from \$7.69/hour to \$6.57/hour. Mr. Tullas previously held the position of Painter, WG-9, step 2, and he suffered a reduction in his rate of pay from \$7.64/hour to \$6.57/hour. Both employees were assured by Navy officials that they would be entitled to "saved pay" for a period of up to 2 years, and both employees argue that they would not have agreed to enter the training program and accept the downgrades if they had known they would not receive "saved pay".

Mrs. Grafton is employed at the Navy Ships Parts Control Center, Mechanicsburg, Pennsylvania, and on February 25, 1979, she entered the Career Development Program and accepted a downgrade from the position of Supervisory Accounting Technician, grade GS-8, step 5, to the position of Inventory Management Specialist, grade GS-5, step 10. This downgrade resulted in a reduction in her rate of pay from \$7.85/hour to \$6.57/hour. Mrs. Grafton argues she is entitled to salary retention based upon our prior decision in Faye Abu-Ghazaleh, 56 Comp. Gen. 199 (1976), as well as the provisions of the Civil Service Reform Act of 1978, Pub. L. 95-454, October 13, 1978, 92 Stat. 1221, and the implementing regulations contained in 5 C.F.R. Part 536.

Our decision in Abu-Ghazaleh, supra, held that where an employee accepted a downgrade in order to enter an employee development program, the reduction was

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considered not to be at the employee's request and the employee was therefore entitled to salary retention or "saved pay" for up to 2 years under the provisions of 5 U.S.C. § 5337 (1970). However, with the enactment of the Civil Service Reform Act of 1978, effective January 11, 1979, section 5337 was repealed and replaced by Title VIII of the Reform Act, Grade and Pay Retention. See section 801(a)(1,2) of Pub. L. 95-454. Under the provisions of 5 U.S.C. § 5363, employees who suffer a reduction in pay under circumstances prescribed by the Office of Personnel Management by regulation may be entitled to pay retention. Those regulations, which were issued as interim regulations on March 2, 1979, 44 Fed. Reg. 11741-45, with retroactive effect to January 1979, are contained in 5 C.F.R. Part 536, and they provide, in pertinent part, as follows:

"§ 536.212 Extension of pay retention to employees in other circumstances.

"(a) Under 5 U.S.C. 5363(a)(3), the Office of Personnel Management is authorized to prescribe circumstances in which pay retention shall be extended to employees who are not otherwise entitled to pay retention under 5 U.S.C. 5363. The Office of Personnel Management has determined that pay retention shall be extended under this provision, except as provided in paragraph (c) of this section, to any employee whose rate of basic pay would otherwise be reduced:

* * * * *

"(2) As a result of the employee's declination of an offer, to transfer with his or her function under circumstances not qualifying the employee for grade retention, reassignment to a position in a lower wage area, or reassignment to a position in a different pay schedule;

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"(3) As a result of the placement of the employee in a formal employee development program generally utilized Government-wide: Upward Mobility, Apprenticeship, and Career Intern Programs; or as the result of placement in a position which the agency has determined is hard to fill:

* * * * *

"(b) Except as provided in paragraph (c) of this section, an agency may extend pay retention to any employee whose rate of basic pay would otherwise be reduced:

"(1) Under circumstances similar to those listed in paragraph (a) of this section; or

"(2) As a result of a personnel action initiated by management to further an agency's mission, in accordance with the general intent of subchapter VI of chapter 53 of title 5, United States Code."

Since this case involves an analysis of these new regulations, we asked the Office of Personnel Management (OPM) for its views based on the facts in this case. The report from OPM states that in order to receive pay retention under section 536.212(a)(3) an employee must enter a Government-wide Upward Mobility, Apprenticeship, or Career Intern Program, and entrance into an internal training program does not entitle an employee to pay retention under this provision of the regulations. The report points out that under section 536.212(b)(1) the Navy has the authority within its discretion to grant pay retention to an employee who suffers a reduction in pay due to circumstances similar to those in section 536.212(a), but as noted by the OPM report, the Navy has chosen not to extend pay retention in this manner.

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However, the report from OPM focuses on section 536.212(a)(2) and points out that an employee who is reassigned to a position in a different pay schedule is entitled to pay retention and that reassignments includes any type of placement, not at the employee's request, into a position under a different pay schedule. As to whether entrance into a training program is a demotion "at the employee's request," OPM states that a demotion which is considered to be at the employee's request is that "(1) which is initiated by the employee for his or her benefit, convenience, or personal advantage, including consent to a demotion in lieu of one for personal cause, and (2) which is not predicated on an announced management-initiated action which, in turn, may result in a negative impact on the employee." See 5 C.F.R. § 536.208.

The report from OPM continues by stating that since the primary intent of a training program is to benefit the agency and/or Government by applying specialized skills acquired through the training program, selection and demotion into a training program is not considered to be at the employee's request.

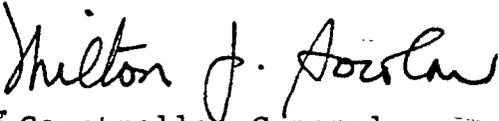
The report from OPM concludes that since these employees (Messrs. Brooks and Tullas) went from Wage Grade to General Schedule positions incident to demotions not at their request, they are entitled to pay retention under the provisions of 5 C.F.R. § 536.212(a)(2) concerning reassignments to different wage schedules.

Based on the above, we conclude that Messrs. Brooks and Tullas are entitled to pay retention under the provisions of 5 C.F.R. § 536.212(a)(2). Given that determination, it is unnecessary to decide whether they are entitled to pay retention under section 536.212(a)(3) as the result of placement in a position which the agency has determined is hard to fill. The claims of Messrs. Brooks and Tullas will be settled by our Claims Group or the Navy, as appropriate.

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With regard to the claim of Ms. Grafton we note that unlike Messrs. Brooks and Tullas, she did not undergo a reassignment to a different wage schedule incident to her demotion upon entering the training program. As set forth above, Ms. Grafton is not entitled to pay retention under section 536.212(a)(3) since she did not enter one of the three specified Government-wide training programs. However, as OPM's letter to us points out, the Navy has the authority under section 536.212(b)(1) to grant pay retention to an employee who takes a reduction in pay due to circumstances similar to those in section 536.212(a).

The Navy is aware of this provision but has not exercised its discretion to extend pay retention to Ms. Grafton. Under these circumstances, we would not object if the Navy chose to exercise its discretion under the regulation and granted Ms. Grafton pay retention. But, in the absence of such a determination, we must conclude that Ms. Grafton is not entitled to pay retention incident to her demotion in entering an internal training program.


Acting Comptroller General
of the United States

Memorandum

March 19, 1981

TO : Associate Director, AFMD (Claims Group) Room 5858

Milton J. Auster

FROM Acting Comptroller General

SUBJECT: Claims for pay retention - Brooks, Grafton, and Tullas
B-198765-O.M.

Returned herewith are files Z-2818231, Z-2818232, and Z-2819946 along with a copy of our decision of today, B-198765, holding that Messrs. Brooks and Tullas are entitled to pay retention but that Ms. Grafton's claim for pay retention must be denied. Settlements should be issued to Messrs. Brooks and Tullas by your office or the agency as appropriate.

Attachments - 4